THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rating appeal; Accuracy of Compiled list RV in 2017 Rating List; Warehouse & Premises; price per m² to be adopted; Lotus and Delta v Culverwell (VO) [1976] RA 141; rental evidence; Decision: Appeal Dismissed

Re: Units 1c & 1d Deacon Industrial Estate, Forstal Road, Aylesford, Kent ME20 7SP

APPEAL NO: CHG100066236

BETWEEN:	Quazar International Ltd	Appellant
	And	
	Valuation Officer	Respondent

PANEL: Mr I Lonsdale (Senior Member)
Mrs V Hollender

CLERK: Mr G Wayman

REMOTE HEARING: 7 December 2020

APPEARANCES:

Mr J Cheeseman of Altus Group representing the appellant
The Respondent Valuation Officer was represented by Mr S Madiyiko

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Summary of decision

1. The appeal is dismissed.

Introduction

2. This was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was originally £106,000 from 1 April 2017, with a description of Warehouse and Premises. This was a compiled list appeal so the material day was also 1 April 2017. At the challenge stage the Valuation Office Agency (VOA) reduced the RV to £98,000 with effect from 1 April 2017. The appeal was made on 17 September 2020 against the Valuation Officer's (VO) Decision Notice of 1 June 2020 in respect of the appeal property (hereditament) and the RV of £98,000. The VO's decision was to treat the appellant's proposal as not well founded and the entry of £98,000 RV was deemed as correct.

3. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

4. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

5. Mr Cheeseman appeared on behalf of the appellant as both Advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Cheeseman's declaration of truth included a statement that he was instructed under a conditional fee arrangement.

6. Mr Cheeseman in his declaration declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the client's case.

7. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

8. Mr Madiyiko on behalf of the Valuation Officer (VO) stated he was acting as both advocate and expert witness.

9. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

10. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

Preliminary issues

11. Mr Cheeseman sought to introduce additional pieces of evidence which were a full copy of the lease for Unit 3b Deacon Industrial Estate and extracts from the leases of Units1c and 1d. Mr Cheeseman initially informed the Tribunal Office on Friday 4 December 2020 that he wanted to introduce this evidence. Mr Cheeseman did not believe this constituted new evidence as the contents of both of these pieces of evidence had been referred to in his challenge document. In Mr Cheeseman's opinion, the additional evidence should be included in order to help the panel in its decision making.

12. Mr Madiyiko objected to the inclusion of this evidence as it was available when the original challenge was submitted. He also stated that as it was submitted so late, he would not have time to consider it and make comments.

13. After a short adjournment the panel decided that this additional evidence should not be included as it would have been available and could have reasonably been acquired at the challenge stage. Therefore in the panel's opinion it does not comply with reg 17A of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2017. The panel also consider that the basic information on the leases were included in the challenge documents; therefore, the parties would not be prejudiced by the exclusion of this evidence.

Issue

14. The issue between the parties concerned the RV of the appeal property and, specifically, the rate per m² that should apply. Mr Cheeseman, for the appellant, sought a reduction to £90,500 RV based on £60 per m². Mr Madiyiko, for the VO, defended the existing RV of £98,000, which was based on £65 per m² and sought dismissal of the appeal.

15. All relevant factual information was not disputed by the parties.

Decision and reasons

16. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD).

17. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal.

18. The appeal property was entered into the 2017 Rating List on 8 May 2018 as a Warehouse and Premises effective from 1 April 2017, this entry was to merge the assessments (Units). The property comprised two purpose built steel framed portal sheds within a terrace of industrial units, the properties were built around 1979. The properties are contiguous and separated by a single blockwork party wall, the external envelope is of insulated steel cladding and a combination of brick and block cavity walls with a solid concrete slab floor. The roof is of steel cladding panels and translucent lighting. Both Units comprised a

warehouse and ground and first floor offices and Unit 1c has a large mezzanine floor. The appeal property is situated on an Industrial Estate with similar properties. The estate is located in Aylesford, 4 miles west of Maidstone. The VO submitted that the total area of the appeal property was 1426 m².

19. The panel was informed that originally a value Matrix had been established on the Units within the Deacon Industrial Estate. Shown below were the original values attributed by the VO to the different size of units on the Estate.

m²	**Current Tone Value**
0 - 500	£80
500 – 1200	£75
1200 - 1700	£70
1700 – 2000	£65
2000 +	£55

20. Mr Cheeseman stated that at the date of proposal Units 1c and 1d were held on separate leases. He also pointed out that Unit 3b was also held on an individual lease all these leases reflected the values achieved for the appropriate size of the individual Unit, which is the 500 -1200 m² range.

21. Unit 1d was held on a 10 year lease effective from 1 April 2015 at a rent of £53,150 pa (with a 6 months' rent free period) on an ITMS of 722.15 m² the rent analysed to £66.12 per m².

22. Unit 1 c was originally let on a 15 year lease from November 2014 at a rent of £46,100 pa. However, at the same time as acquiring Unit 1d a new lease was negotiated for Unit 1c to run along with Unit 1d. 1c was renewed from 1 April 2015 on a 10 year lease at £53,660 pa with a 3 month rent free period on an ITMS of 727.26 m² the rent analysed to £69.50 per m²

23. Mr Cheeseman was also aware of the following rental evidence. Unit 2b was held on a new 10 year lease effective from December 2015 with a rent of £27,700 pa. This property had a 6 month rent free period and with an ITMS of 321.77 m² the rent analysed to £77.47 per m².

24. Unit 3b had a new 10 year lease effective from October 2014 at a rent of £62,500 pa with a 3 month rent free period with an ITMS of 986.86 m² the rent analysed to £60.16 per m². Unit 1a had a 10 year lease effective from October 2014 with a rent of £145,000 pa and had an 8 month rent free period. On an ITMS of 2634.61 m² the rent analysed to £44.03 per m².

25. In Mr Cheeseman's opinion the rental evidence within Deacon Industrial Estate supported a reduction in the tone value of properties in the 500 m² to 1200 m² band range from £75 per m² to £65 per m². Similarly the rent on Unit 1a supported a reduction in the tone value of properties in the 2000+ m² band range from £55 per m² to £45 per m².

26. Mr Cheeseman claimed that there is no direct evidence within the appropriate size band the appeal property is placed in (1200 – 1700 m²). However, as a valuer he made a judgement that if the evidence suggested that the smaller size band (500-1200 m²) is overvalued by £10 per m² and the larger size band (2000+ m²) is also overvalued by £10 m², it is reasonable to assume that the adopted £65 per m² is also overvalued. Therefore in his opinion, £60 per m² is a more reasonable valuation.

27. The VO pointed out that the appellant's comparable evidence did not fall within the band size range the appeal property is within.

28. Based on the form of return the total rent on Units 1c & 1d was £106,810 pa rent it was effective 3 months pre AVD and it analysed to £65.47 per m².

29. The VO pointed out that this information was not available at the original revaluation in 2017. Therefore when the appeal property was originally entered into the list at £70 per m² it was based on the following rental evidence within Deacon Industrial Estate.

30. Units 3a & 3b – 1511 m² in size with a rent of £105,000 pa effective from September 2014, and analysed to £66.46 per m².

31. Units 1e & 1f – 1204 m² in size with a rent of £92,000 pa, effective from April 2013, and analysed to £77.92 per m².

32. Unit 3c had a rent £45,948 pa effective from January 2013, which analysed to £72.48 per m² but was significantly smaller at 596 m².

33. Consequently, taking this rental evidence into account, and placing weight on the passing rent on the subject premises which analysed to £65.47 m², which was not known at the 2017 revaluation, it was the VO's opinion that the proposed revised rate of £65 per m² for the appeal property was fair and reasonable.

34. The panel accepted that the rent passing on the appeal property was the appropriate starting point, in accordance with the propositions for weighing evidence established in the Lands Tribunal decision in *Lotus and Delta v Culverwell (VO)* [1976] RA 141. The RV represents the rent that the premises would have likely achieved on the open market at the AVD of 1 April 2015. *Lotus and Delta* also established that assessments of comparable properties were relevant and that an opinion of the value of the appeal property should be reached in the light of all of the evidence, weighed appropriately.

35. The panel was informed that from the form of return the joint passing rent on the appeal property at £106,810 pa analysed to £65.47 per m². It also found that even when the individual leases on Units 1c and 1d, that were effective from April 2015, are analysed they showed values of £66.12 per m² and £69.50 per m².

36. The panel noted Mr Cheeseman's argument that the evidence suggested that the smaller size band (500-1200 m²) is overvalued by £10 m² and the larger size band (2000+ m²) is also overvalued by £10 m². Consequently, it can be assumed that the band size the appeal property is placed in (1200 – 1700 m²) is also overvalued.

37. The panel took account of Mr Cheeseman's argument that the whole matrix of values on this Estate is overvalued. However, the panel arriving at a decision only considered the value attributable to the appeal property and not to the whole matrix.

38. In the panel's opinion it found that this evidence did not support Mr Cheeseman's argument that a rate of £60 per m² was appropriate. It was the panel's view that weight should be placed upon the joint passing rent on Units 1c and 1d as according to the form of return, it was effective only 3 months prior to the AVD, January 2015. The panel was presented with

two analyses of the rent by the parties, the VO gave an analysis on the joint rent of Units 1c and 1d whereas the appellant's representative gave analysis on the individual rents on these properties. The analysis of the joint and individual rents were all in excess of £65 per m².

39. The panel considered the other comparable rental evidence presented by both parties however, it placed less weight on it. This was because in line with *Lotus and Delta* the panel considered that as the rent on the appeal property was effective close to the AVD this was the best starting point.

40. Having placed most weight on the actual passing rent on the appeal property, the panel was satisfied that the rate of £65 per m² proposed by the VO was supported by this evidence and was a fair and reasonable value to adopt.

41. Consequently, in appeals of this nature, the burden of proof rested on the appellant's representative to illustrate that the appeal property's assessment was overvalued. In relation to this appeal, Mr Cheeseman had failed to persuade the panel that the rate proposed by the VO was excessive. Therefore, the appeal is dismissed.

Appeal No: CHG100066236

Dated: 22 December 2020